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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: UniTel, Inc. Notice of *Ex Parte* Meeting
WC Docket No. 10-143
Petition of CRC Communications of Maine, Inc. and Time Warner
Cable Inc. for Preemption Pursuant to Section 253**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206, please be advised that on March 16, 2011, the undersigned, along with Thomas J. Moorman, both counsel for UniTel, Inc. (“UniTel”), along with Joseph G. Donahue and Stephen G. Kraskin, counsel to Lincolnville Networks, Inc., Tidewater Telecom, Inc. Oxford Telephone Company and Oxford West Telephone Company (the “Lincolnville & Oxford RLECs”), attended an ex parte meeting via telephone with Angela Kronenberg, Legal Advisor to Commissioner Clyburn. For purposes of this letter, UniTel and the Lincolnville & Oxford RLECs being referred to herein as the “Maine RLECs.”

During the meeting, and consistent with their prior *ex parte* presentations filed in this proceeding (such as the one filed by UniTel on March 11, 2011), the Maine RLECs addressed their perspective that, ultimately, the issues being addressed in this proceeding are focused on the states’ rights to interpret and to apply the law regarding section 251(f)(1) of the Communications Act of 1934, as amended (the “Act”). Thus, any action by the FCC, whether it be in the form of a preemption or a declaratory ruling that serves to undermine the legal and factual findings of the Maine Public Utilities Commission (“MPUC”) in the underlying action, must be avoided as it will be tantamount to the FCC effectively usurping states’ rights delegated by Congress to the State Commissions regarding prosecution of section 251(f) petitions. The Maine RLECs also noted that this result would be particularly troublesome at a time when the Commission has also sought to bolster the state/federal partnership on universal service issues;¹ the very same issues

¹ See, e.g., *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint on Universal Service, Lifeline and Link-Up, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-

that the record reflects were of critical importance to the MPUC's evaluation undertaken and conclusions reached in its July 9, 2010 decision denying the Time Warner's request to remove the section 251(f)(1) rural exemption of each of the Maine RLECs.

Counsel for the Maine RLECs further indicated that the issue of subject matter jurisdiction of the state commission to arbitrate is an issue controlled by a statute, which is to be interpreted and applied, in the first instance, within the reasonable discretion of the entity before which the jurisdictional issue is raised, *i.e.* the state commission, subject to the review of that state decision by the court, if an appeal is appropriately taken. The FCC should not interpret or fill in the gaps in a statute regarding technical matters within the expertise of a state regulatory agency with exclusive jurisdiction as delegated by Congress. Rather, if the FCC chose to consider a proposed rule, an NPRM would be issued, thereby offering all interested parties the opportunity to comment on it including, but not limited to, the legal basis for such a rule. Further, if there is to be any deference regarding the interpretation of statute regarding jurisdiction to arbitrate, that deference is owed to the state commission, which is the agency charged by Congress with the responsibility to administer the section 251(f)(1) rural exemption provisions of the Act.

Finally, counsel for the Maine RLECs repeated their concerns that a declaratory ruling, as presently contemplated by the Commission, would lead to further costly and burdensome repetitive litigation of essentially identical elements. The potential for this harmful effect was demonstrated in Time Warner's recent *ex parte* letter of March 1, 2011, in which it stated its clear intent with respect to what it called a hypothetical future petition under Section 251(f)(2), which Time Warner would apparently wish to see become a full blown proceeding (presumably taking continued advantage of its disproportionate financial capacity to litigate). The Maine RLECs noted that, but for the procedural road that the MPUC had taken (with the voluntary participation of Time Warner and CRC Communications of Maine, Inc.),² the MPUC may very well have taken a different procedural route to resolve the seemingly identical issues before it, such as through a newly filed section 251(f)(2) petition. Time Warner's recent suggestion, therefore, would result in a duplicative expenditure of resources by the MPUC and of the five Maine RLECs that could not, in the context of this case, possibly be consistent with the public interest. The Maine RLECs further urge that if the Commission were to issue a decision which might be expected to precipitate further proceedings before the Maine PUC, that the Commission reaffirm that in any such proceedings the process and the decision is completely within the jurisdiction and discretion of the Maine PUC, including but not limited to the discretion of the Maine PUC to make determinations pursuant to Section 251(f) based on the evidentiary proceedings the Commission has conducted and the resulting findings of fact and conclusions of law entrusted to the Maine PUC pursuant to Section 251(f).

135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-13, released February 9, 2011 at ¶¶84-85.

² See, *e.g.*, UniTel Comments at 5-6 and referenced exhibits.

KELLY & ASSOCIATES, LLC

By:



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cc: A. Kronenberg
J. Donahue
S. Kraskin
T. Moorman